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Ontario
1 MINISTRY OF TREASURY, ECONOMICS
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2 LOCAL GOVERNMENT DIVISION

3 BULLETIN NO: 3

4
AMENDMENTS TO
THE MUNICIPAL ELECTIONS ACT, 1977

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This bulletin has been prepared for the guidance of members of the staff of Ontario municipalities in carrying out their duties.

Wherever a provision of any statute affects a matter discussed in this bulletin, the reader should refer to the statute itself, ensuring that he has an up-to-date version with all amendments.

Municipalities should consult a solicitor for assistance in interpreting the provisions of the statutes where any question arises as to their interpretation.

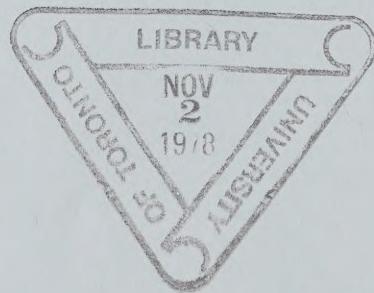


TABLE OF CONTENTS

	<u>PAGE</u>
INTRODUCTION	1
THE MUNICIPAL ELECTIONS AMENDMENT ACT, 1978	3
Term of Office and Remuneration	3
Nominators	4
Nominations - Insufficient Number of Candidates	4
Objection by Candidate	6
Preliminary List of Electors for "New Elections"	6
Subsection 3 of Section 117 - Correction	9
Liquor Licence Act, 1975	9



1. INTRODUCTION

- 1.1 On January 1, 1978, The Municipal Elections Act, 1977 came into force. This new act repealed The Municipal Elections Act, 1972 as amended.
- 1.2 The changes in procedure were the subject of a bulletin entitled "Highlights of The Municipal Elections Act, 1977". This bulletin was circulated, along with a copy of the Act, in January, 1978.
- 1.3 Since that time a number of questions have arisen which for purposes of clarity were resolved with the passing of The Municipal Elections Amendment Act, 1978.
- 1.4 This bulletin will briefly discuss the amendments and should be read in conjunction with a copy of the amending legislation. This bulletin is not meant to be a substitution for reference to the new act. While every precaution has been taken in the preparation of this bulletin, the clerk is strongly advised to refer directly to the Act to ensure accuracy and completeness.
- 1.5 The changes will not likely require revisions in the clerk's procedures with the exception of the use of the new form under clause a of subsection 1 of section 36 of The Municipal Elections Act, 1977.
- 1.6 This bulletin together with the previously circulated "Highlights of The Municipal Elections Act, 1977" will provide the clerk with a ready reference to the major changes in the municipal election process.



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2. THE MUNICIPAL ELECTIONS AMENDMENT ACT, 1978

Term of Office and Remuneration

2.1 Section 9 of The Municipal Elections Act, 1977 previously read as follows:

"(1) Notwithstanding any other general or special Act and except where otherwise specifically provided in this Act, the term of office of all offices, the election to which is governed by this Act, shall be two years, commencing on the first day of December in an election year.

(2) The holders of offices hold office until their successors are elected and the newly elected council or local board is organized."

2.2 Section 9 has now been amended to read as follows:

"(2) The term of office of members of a council or local board who hold office on the 30th day of November, 1978, and whose term of office but for this subsection would expire with the 31st day of December, 1978, shall, subject to subsection 3, expire with the 30th day of November, 1978, and where such members are paid an annual allowance, the allowance for the year 1978 shall be reduced proportionately.

(3) The holders of offices hold office until their successors are elected and the newly elected council or local board is organized."

2.3 The Municipal Elections Act, 1972 (which governed the regular municipal elections held in 1976) provided for a two-year term of office commencing on the 1st day of January, 1977. Members elected in that year would accordingly hold office until the 31st day of December, 1978.

2.4 The amended section is now designed to make it clear that members of councils and local boards whose term of office would normally expire on December 31st, 1978, will now leave office on the last day of November, 1978. Provision is also made for a proportionate reduction in the annual allowance of members whose remuneration is paid on that basis. Subsection 3 of section 9 is unchanged from the previous subsection 2.

Nominators

- 2.5 Clause a of subsection 1 of section 36 of The Municipal Elections Act, 1977 previously read as follows:
- "shall be signed by at least ten electors whose names are entered, or entitled to be entered under section 33, in the polling lists of electors entitled to vote in an election to such office."
- 2.6 The re-enactment would change the reference to "polling list" to "preliminary list", as the polling list may not have been prepared by the time nomination papers may be filed, and provides for the taking of an affidavit in the case of those electors whose names are not on the preliminary list but are otherwise entitled to vote.
- 2.7 The amended clause now reads:
- "(a) shall be signed by at least ten electors, either whose names are entered in the preliminary list of electors or who have furnished to the clerk an affidavit in the prescribed form that they are entitled to vote in the election to such office."
- 2.8 (The Local Government Division of the Ministry of Treasury, Economics and Intergovernmental Affairs will be producing in the near future a booklet setting out the various forms prescribed for use at municipal elections).

Nominations - Insufficient Number of Candidates

- 2.9 Subsection 5 of section 37 of The Municipal Elections Act, 1977 previously read as follows:
- "Where the number of candidates for an office who are nominated at the end of nomination day is not sufficient to fill the number of vacancies to which the candidates may be elected, on the Wednesday following nomination day the clerk may, between the hours of 9.00 o'clock in the forenoon and 5.00 o'clock in the afternoon, receive and certify additional nominations for the office in respect of which there was an insufficient number of candidates."

- 2.10 The re-enactment is designed to express more clearly the procedure that is to be followed where, at the end of nomination day, fewer candidates have been nominated than the number of vacancies to be filled. Those candidates that have been nominated are to be declared elected by the clerk in the usual way on the Tuesday following nomination day (under s.40(1)). On the Wednesday, additional nominations may be filed for the vacancies still to be filled, and if they are, the clerk is to follow the same procedure mutatis mutandis as with nominations filed on nomination day. If the additional nominations filed are not greater than the vacancies still to be filled, the clerk on the Thursday is to declare those candidates elected (under s.40(1a)).
- 2.11 Subsection 5 of section 37 now reads as follows:
- "Where the number of candidates for an office who are nominated at the end of nomination day is not sufficient to fill the number of vacancies to which candidates may be elected, subsection 1 of section 40 respecting acclamation applies to those candidates, but additional nominations for the remaining vacancies in the office in respect of which there was an insufficient number of candidates may be filed in the office of the clerk on the Wednesday following nomination day between the hours of 9.00 o'clock in the forenoon and 5.00 o'clock in the afternoon and the provisions of subsection 4 apply, with the necessary modifications, as though the additional nomination papers had been filed on nomination day."
- 2.12 Subsection 1 of section 40 of The Municipal Elections Act, 1977 was also amended in a complementary fashion and now reads:
- "(1) If no more candidates are nominated at the end of nomination day for any office than the number to be elected, the clerk shall forthwith after 5 o'clock in the afternoon of the day following nomination day declare that candidate or those candidates duly elected.

(1a) In the case where additional nominations have been filed under subsection 5 of section 37 and the additional number of candidates nominated is not more than the remaining number of vacancies for which the additional candidates were nominated, the clerk shall forthwith after 5 o'clock in the afternoon of the Thursday following nomination day, declare that candidate or those candidates duly elected."

Objection by Candidate

- 2.13 Paragraph 4 of subsection 1 of section 55 of The Municipal Elections Act, 1977 previously provided that the name of the objecting candidate be indicated on the prescribed oath. To do so is not feasible as the oath is orally administered. As re-enacted the name of the objecting candidate will be shown on the polling list opposite the name of the person to whom objection is taken.
- 2.14 The re-enacted paragraph now reads:
- "If voting by such person is objected to by any candidate or scrutineer, the deputy returning officer shall enter the objection or cause it to be entered on the polling list maintained by the poll clerk, by writing opposite the name of such person the words "Objected to by (name of candidate on whose behalf the objection was made)" and the deputy returning officer shall require the person in respect of whom the objection was made to take the prescribed oath."

Preliminary List of Electors for "New Elections"

- 2.15 Section 92 of The Municipal Elections Act, 1977 provides for the procedure to be followed when a new (as opposed to a "regular") election is required to be held. In most instances, the polling list prepared for the last regular election is to be used as the preliminary list for the new election and is subject to revision in the usual way, subject to the application of

certain rules respecting the extension of the qualification period for electors. The procedure respecting the revision of the list is set out in subsection 4 of section 92. Subsection 5 of section 92 sets out the procedure where, before the date of the new election, the annual enumeration under The Assessment Act has been completed. In that case, a new preliminary list based on that enumeration is to be used as the preliminary list for the new election. The re-enactment of subsection 5 is designed to make it clear that the rules (with necessary modification) respecting the extension of the qualification period apply with respect to the revision of that list.

2.16

Subsection 4 of section 92 (unchanged) and subsection 5 as re-enacted and showing underlined the words added, are set out below:

"(4) Unless a new preliminary list of electors has been furnished by the assessment commissioner under subsection 5, the preliminary list to be used for preparation of the polling list for a new election shall be the polling list prepared for the last regular election, which shall be subject to revision as if it were a preliminary list of electors and sections 24 to 30 apply mutatis mutandis to the printing or reproduction of the list and to the revision of the list, subject to the following rules:

1. Where a new election is required under clause a of section 38 or subsection 3 of section 40, the period during which a person may qualify as an elector for the office to be elected shall be the period of qualification specified under section 12 or 13 and the period following such qualification period terminating on the Thursday following the polling day for the last regular election.
2. Where a new election is required under section 111, the period during which a person may qualify as an elector for the office to be elected

shall be the period of qualification specified under section 12 or 13 and the period following such qualification period terminating on the date of the receipt by the clerk of the municipality of the copy of the judgment under subsection 6 of section 111.

3. Where a vacancy otherwise occurs and the council of the municipality or a school board for which the clerk is required to hold elections requires an election to be held to fill the vacancy, the period during which a person may qualify as an elector for the office to be elected shall be the period of qualification specified under section 12 or 13 and the period following such qualification period terminating on the date of the directive, by-law or notice specified in clause a, b or c of subsection 1.
 4. Where a by-law or question is to be submitted to the electors, the period during which a person may qualify as an elector entitled to vote on the by-law or question, as the case may be, shall be the period of qualification specified under section 12 or 13 and the period following such qualification period terminating on the date of the order of the Ontario Municipal Board given under section 262 of The Municipal Act.
- (5) Where in the year following an election year the annual enumeration under The Assessment Act has, not less than sixty days prior to the holding of the new election, been completed for the municipality or municipalities in which the new election is to be held, the assessment commissioner shall, within fourteen days of a request by the clerk or clerks of such municipality or municipalities, furnish a new preliminary list of electors based on such annual enumeration and in accordance with the requirements of this Act pertaining to the preparation of such lists and such preliminary list

shall for all purposes, including revision by the clerk, be the preliminary list of electors for the new election and the revision shall be subject to the rule set out in paragraph 2, 3 or 4 of subsection 4, as the case requires, except that in the application of the relevant rule the qualification period expressed therein as "the period of qualification specified under section 12 or 13" shall be deemed instead to be the period in the year following the election year during which the enumeration was taken under section 23 of The Assessment Act."

Subsection 3 of Section 117 - Correction

- 2.17 A typographical error has been corrected so that this subsection reads 106 instead of 104 in the third line.

Liquor Licence Act, 1975

- 2.18 Subsection 2 of section 32 of The Liquor Licence Act, 1975 has been repealed and the following substituted therefor:

"Where the vote is held on a day other than the date set for the election of members to the council of the municipality, for the purpose of determining the period during which a person may qualify as an elector entitled to vote on the question, the reference in paragraph 4 of subsection 4 of section 92 of The Municipal Elections Act, 1977, to the order of the Ontario Municipal Board given under section 262 of The Municipal Act shall be deemed to be a reference to the date of the approval given by the Board as required by section 31 of this Act."

- 2.19 The amendment is intended to make it clear that in the application of the relevant rule under section 92 governing the qualification period for electors entitled to vote on a question submitted under The Liquor Licence Act, 1975, the date of the approval of the

Liquor Licence Board to the fixing of the date for taking the vote is to stand in the place of the date of the order of the Municipal Board fixing the date for the taking of the vote on a by-law or any other question that may be submitted to the electors.

* * * * *

The changes referred to in this bulletin have been made in an attempt to eliminate any possible misunderstanding of the sections involved and ensure that the electorate is not inconvenienced in the exercise of its vote.

Do you want more information on this subject? Ask any of the field officers of the Local Government Division. They are located at these addresses:

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